

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

IRA B. HARRIS,

Plaintiff,

v.

GARY KEMPKER, et al.,

Defendants.

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No. 1:03-CV-82 CAS

**MEMORANDUM AND ORDER**

This closed matter is before the Court on various matters. This action was dismissed without prejudice for failure to exhaust administrative remedies. Plaintiff filed a motion for leave to file an amended complaint, motion for leave to proceed in forma pauperis under 42 U.S.C. § 1983, motion to appoint counsel, and motion for leave to proceed in forma pauperis on appeal.

**Motion for Leave to File Amended Complaint**

Although a pretrial motion for leave to amend is to be liberally granted, different considerations apply to motions filed after dismissal. Humphreys v. Roche Biomedical Laboratories, Inc., 990 F.2d 1078, 1082 (8th Cir. 1993). After a complaint is dismissed, the right to amend under Fed. R. Civ. P. 15(a) terminates. Humphreys, 990 F.2d at 1082. The decision whether to allow amendment of a complaint is left to the Court's sound discretion. Anderson v. Alpha Portland Industries, Inc., 836 F.2d 1512, 1521 (8th Cir. 1988), cert. denied, 489 U.S. 1051 (1989). It is appropriate to deny leave to amend where the filing of the amended complaint would be futile. Humphreys, 990 F.2d at 1082.

The Court will deny plaintiff leave to file an amended complaint. The complaint was dismissed because plaintiff failed to exhaust his administrative remedies. The amended complaint

continues to assert an unexhausted claim alleging that the defendants placed plaintiff in administrative segregation instead of providing medical treatment. The filing of an amended complaint would be futile because exhaustion of administrative remedies is a necessary step before bringing suit. Therefore, plaintiff's motion for leave to amend his complaint will be denied. Plaintiff's motion for leave to proceed in forma pauperis under 42 U.S.C. § 1983 and motion to appoint counsel will be denied as moot.

#### **Motion for Leave to Proceed In Forma Pauperis on Appeal**

Plaintiff sent a letter to the Court requesting that he receive an extension of time for filing his appeal. Plaintiff filed his notice of appeal one day late. The Court will grant that motion pursuant to FED. R. APP. P. 4(a)(5)(A). Plaintiff also requests leave to proceed in forma pauperis on appeal. The Court will grant plaintiff's motion for leave to proceed in forma pauperis on appeal pursuant to FED. R. APP. P. 24(a)(3), because plaintiff was previously granted in forma pauperis status in this Court.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff's motion for leave to file amended complaint is **DENIED**. [Doc. 83]

**IT IS FURTHER ORDERED** that plaintiff's motion for leave to proceed in forma pauperis under 42 U.S.C. § 1983 is **DENIED as moot**. [Doc. 84]

**IT IS FURTHER ORDERED** that plaintiff's motion for appointment of counsel is **DENIED as moot**. [Doc. 85]

**IT IS FURTHER ORDERED** that plaintiff's request for an extension of time to file an appeal is **GRANTED**. [Doc. 89]

**IT IS FURTHER ORDERED** that plaintiff's motion for leave to proceed in forma pauperis on appeal is **GRANTED**. [Doc. 87]

A handwritten signature in black ink, appearing to read "Charles A. Shaw", written over a horizontal line.

**CHARLES A. SHAW**  
**UNITED STATES DISTRICT JUDGE**

Dated this 31st day of August, 2005.